Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the matter of	)	
	)	
Implementation of Section 621(a)(1) of the Cable	)	
Communications Policy Act of 1984 as amended	)	MB Docket No. 05-311
by the Cable Television Consumer Protection and	)	
Competition Act of 1992	)	
	)	

COMMENTS OF

DIANA E. AGOSTA

IN RESPONSE TO THE FURTHER NOTICE

OF PROPOSED RULEMAKING

Diana E. Agosta submits these comments in response to the Further Notice of Proposal
Rulemaking, released March 5, 2007, in the above-captioned rulemaking ("Further Notice").

For the reasons stated herein, I oppose proposals in the Further Notice to grant existing
cable franchisees the relief granted to new franchise applicants under the FCC's March 5, 2007
Report and Order in this docket (the "Order"). The FCC's proposals are inconsistent with the letter and spirit of the Cable Act; are detrimental to the public interest; and are not yet supported
by any factual record. Further, their supposed rationale for adoption only makes sense in the
awarding of competitive franchises not in the renewal of existing ones.

<u>1. FCC's Barrier to Entry Analysis Is Not Applicable to Renewals</u>

I oppose the Further Notice's tentative conclusion that the findings made in the FCC's
March 5, 2007, Order in this proceeding should apply to incumbent cable operators, whether at

the time of renewal of those operators' current franchises, or thereafter. This proceeding is based on Section 621(a)(1) of the Communications Act, 47 U.S.C. § 541(a)(1), and the rulings adopted in the Order are specifically directed at "facilitat[ing] and expedit[ing] entry of new cable competitors into the market for the delivery of video programming, and accelerat[ing] broadband deployment" (Order at ¶ 1). That analysis has no relevance to incumbent providers, who are already serving the market. Granting incumbents the relief provided for new entrants will in no way serve the primary purpose (removing barriers to entry) sought by the FCC in its Order on initial franchising, and will in fact have many deleterious effects on communities instead.

2. FCC Imposition of New Renewal Timetables Is Inconsistent With Cable Act

Abbreviating the timelines for renewal franchising is plainly inconsistent with the Cable Act, which specifies that renewal processes commence three (3) years prior to franchise expiration. 47 U.S.C. 546(a)(1) (providing for commencement of process to ascertain community renewal needs during the six month period commencing 36 months prior to franchise expiration). By providing that parties enter a renewal proceeding as early as 36 months prior to franchise expiration, Congress enabled franchising authorities to conduct competent and informed proceedings for ascertaining community cable needs, draft complex franchise documents, and conduct fair negotiations among equal parties. FCC abbreviation of renewal franchising timelines would frustrate the plain intent of Congress as articulated in the Cable Act to provide for a comprehensive, deliberative, informed franchising process with up to 36 months.

3. FCC Regulation to "Deem Franchise Granted" Violates Cable Act

The Order provides that in the event a local franchising authority has not issued an initial franchise within ninety (90) days, the cable operator may in any event build and operate a cable system under a franchise "deemed granted" pursuant to operation of the FCC's new regulations (Order at ¶ 77). This clearly violates the Cable Act by enabling cable operators to operate without an actual franchise. The "deemed granted" framework is inconsistent with and prohibited by the Cable Act, because the underlying foundation of the Cable Act is that a cable operator must obtain an actual franchise prior to operating a cable system (except where Congress created an exception to this rule with respect to certain franchise transfers). 47 U.S.C. 541(b)(1). If that weren't bad enough, this proposal would compound the serious violation of the spirit and letter of the Cable Act by applying the FCC's new Order to renewal franchising by adopting regulations deeming renewal franchises granted in the absence of actual franchise issuance. If anyone can open a cable business without first obtaining a franchise, what is the point of having a Cable Act, or an FCC for that matter?

4. The FCC Has Insufficient Data and Should Defer to State Law

In its Order, the FCC has already acknowledged that it did not have an adequate basis for a finding that its proposed rules and findings would work better than existing state law. See Order at footnote 2. Accordingly, the Order expressly allows state laws on initial franchising to remain intact. Order at footnote 2. As the Further Notice on renewal is based on a much more limited record than its inquiry into initial franchising, the FCC likewise lacks an adequate basis for making findings about preemption of state renewal law. Moreover, the fact is that the FCC has little or no evidence indicating problems with existing state law governance of renewal franchising, and decades of experience actually demonstrate successful renewal franchising activity is the norm, not the exception. The FCC should not interfere with a well functioning system. To put it more bluntly, the Further Notice lacks balanced, meaningful, and statistically significant evidence showing problems with the renewal process. The FCC is not yet in a position even to have reached a tentative conclusion in this matter. With respect to methodology used in consideration of the record in this rulemaking, the FCC needs to go back to square one and base its Orders on statistically reliable, accurate data, not sweeping generalizations and sketchy anecdotes provided by telco lobbyists seeking to get into the cable business at the public's expense.

5. Proposal Weakens Municipal Franchising Powers and Harm the Public

The existing municipal franchising framework has resulted in unique and valuable benefits to the public, including negotiation of service area, cable system build-out, low-income and elderly subsidies, and Institutional Network and Public, Educational and Governmental ("PEG") Access channels, facilities, and operating support. The Order impinges on municipal franchising authority by reducing (some would say, effectively eliminating) the power of municipalities to negotiate for any of these items. Only one outcome of this Order is certain: Municipalities and the general public will experience a reduction in benefits now negotiated during the franchising process. This attenuation of public benefits would be exacerbated by application of the Order to renewal franchising. The FCC should not undermine an existing franchise renewal process that has generated so many public benefits deemed useful to communities by local officials and the general public. Further, the FCC cannot rationally or legally undertake to weaken municipal powers without first assessing and quantifying the valueof the public benefits generated by the existing legal framework. Clearly, the FCC has not undertaken any serious effort to quantify and value such benefits.

6. Listen to those who know about what's happening on the ground

Finally, I urge the Commission to give deference to those who actually know what it is going on in our communities because that is where they work every day. I wholeheartedly support the comments of the Alliance for Community Media, the Alliance for Communications Democracy, the National Association of Telecommunications Officers and Advisors, the National League of Cities, the National Association of Counties, and the U.S. Conference of Mayors, filed in response to the Further Notice.

7. In Conclusion

I disagree with the rulings in the Order, both on the grounds that the FCC lacks the legal authority to adopt them and on the grounds that those rulings are unnecessary to promote competition, violate the Cable Act's goal of ensuring that a cable system is "responsive to the needs and interests of the local community," 47 U.S.C. § 521(2), and are in conflict with several other provisions of the Cable Act. But even assuming, for the sake of argument, that the rulings in the Order are valid, they cannot, and should not, be applied to incumbent cable operators.

Municipalities have a decades-long history of working in partnership with cable operators to facilitate market entry on fair and reasonable terms. Indeed, over the past decades of cable franchising, municipal franchising authorities have consistently desired competition in cable markets to put a downward pressure on cable rates; it is only in recent years, however, that such competition has finally emerged. The FCC's concern with satisfying the telco industry at any cost ignores the fact that decades of cable franchising experience actually prove that the vast majority of municipalities and cable operators have used the existing legal framework to effectively and reasonably promote competition and fair franchising during initial and renewal franchising, and telcos can secure franchises, as Verizon has successfully done in 45 Massachusetts communities, when they choose negotiation over rewriting established law. Moreover, the FCC's stated goal of promoting competition by changing renewal rules is ill-conceived, as incumbent franchisees are already providing market services. The existing system works well by enabling cable operators and municipal officials reasonable procedures to negotiate renewal franchises that are mutually beneficial to cable operators and to the communities they serve. This has created a sense of partnership between municipalities and cable operators that actually redounds to the benefit of cable operators and the general public.

The current renewal franchising system has worked well, and the FCC is acting rashly by proposing to change renewal rules. Moreover, the FCC is preempted in changing renewal rules that are statutory. The FCC's proposal would weaken local control of franchising, reduce localism in the media, reduce sizeable and unique community benefits, and conflict with longstanding principles of preserving localism in cable franchising. I urge the FCC to discontinue the Further Notice and leave intact the existing franchise renewal framework.

Respectfully submitted,

Diana E. Agosta
180 Claremont Ave. #32
New York, NY 10027
dagosta@rcn.com
212-663-3887